

Following a direct appeal, the Pennsylvania Superior Court affirmed the judgment of sentence on December 15, 2008. See Commonwealth v. Smith, 965 A.2d 302 (Pa. Super. 2008). The Pennsylvania Supreme Court denied a petition for allowance of appeal on April 22, 2009.

On January 28, 2010, Petitioner filed a petition pursuant to the Pennsylvania Post-Conviction Relief Act, 42 Pa. C.S.A. § 9541, et seq. (“PCRA”), asserting an error in the sentencing at docket number CP-02-CR-0010926-2005. As a result, that sentence was vacated and he was resentenced at that docket number on August 15, 2011; however, the sentences at the other two docket numbers remained unchanged.

Petitioner filed an appeal from the new judgment of sentence in which he challenged the sentences at both docket numbers CP-02-CR-0010926-2005 and CP-02-CR-0004823-2006 (the sentence at issue in the pending petition). The Pennsylvania Superior Court entertained the appeal of both sentences and affirmed the judgments of sentence in both cases on April 17, 2013. See Commonwealth v. Smith, 75 A.3d 557 (Pa. Super 2013) (unpublished memorandum). A petition for allowance of appeal was denied by the Pennsylvania Supreme Court on November 7, 2013. See Commonwealth v. Smith, 79 A.3d 1098 (Pa. 2013). Thus, Petitioner’s judgment of sentence at issue in this case became final on February 5, 2014, ninety days after the conclusion of his direct appeal, when the period for filing a petition for writ of certiorari with the United States Supreme Court expired. See Sup. Ct. R. 13; Gonzalez v. Thaler, 565 U.S. 134, 149-50 (2012).

Petitioner commenced this litigation on March 16, 2024, over ten years after his judgment of sentence became final and nine years beyond the expiration of the one-year statute of limitations for filing a federal habeas petition under 28 U.S.C. § 2244(d). As a result, Respondent filed a motion to dismiss the petition as untimely on January 9, 2025 [ECF No. 19].

Petitioner filed a response to Respondent's motion acknowledging the untimeliness of his petition and failing to make any attempt to overcome it. (ECF No. 22, at 1).


On May 28, 2025, Chief Magistrate Judge Lanzillo issued a Report and Recommendation ("R&R") recommending that Respondent's motion to dismiss be granted, that the instant petition be dismissed, with prejudice, as untimely, and that a Certificate of Appealability be denied [ECF No. 25]. Objections to the R&R were due to be filed by July 16, 2025; however, no timely objections have been received by the Court.

Thus, after *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 21st day of July, 2025,

IT IS HEREBY ORDERED that Respondent's motion to dismiss [ECF No. 19] is GRANTED, the within petition for a writ of habeas corpus is DENIED as untimely, and a Certificate of Appealability is also DENIED. The report and recommendation of Chief Magistrate Judge Lanzillo, dated May 28, 2025 [ECF No. 25], is adopted as the opinion of this Court.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief United States Magistrate Judge

All parties of record